FOR PUBLICATION

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN

THE SMITH, KORACH, HAYET, HAYNIE PARTNERSHIP, a Florida Corporation, Plaintiff, vs. ALTON A. ADAMS, JR. individually, and ALTON A. ADAMS, JR. d/b/a ALTON A. ADAMS, JR. AND ASSOCIATES, Defendants.	CIVIL NO. 1992/222

MEMORANDUM AND ORDER

On November 13, 1992, The Smith, Korach, Hayet, Haynie Partnership ("Smith, Korach") filed an action in this Court to enforce a default judgment obtained in a Florida state court against defendants Alton A. Adams, Jr. and Alton A. Adams, Jr. and Associates ("the Adams defendants"). Plaintiff now asserts that it is entitled to judgment as a matter of law because there are no material issues of fact or law in dispute. The Adams defendants have opposed plaintiff's motion, claiming that the Florida judgment is not entitled to Full Faith and Credit because the Florida court did not have personal jurisdiction over them.[1]

1. In addition, this Court held oral argument on plaintiff's
(continued...)

DISCUSSION

A. Standard of Review

Rule 56 of the Federal Rules of Civil Procedure instructs that this Court may grant summary judgment "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c); *see also Hersh v. Allen Products Co.*, 789 F.2d 230, 232 (3d Cir. 1986); *Walker v. Skyclimber, Inc.*, 571 F. Supp. 1176, 1179 (D.V.I. 1983). In considering such a motion, this Court must resolve all doubts and inferences against the movant. *See, e.g., Myer v. Riegel Products Corp.*, 720 F.2d 303, 307 n.2 (3d Cir. 1983).

It is well-established that the Full Faith and Credit Clause applies in the Virgin Islands[2] and that, as a general matter, this Court must accord full faith and credit to judgments duly rendered by other courts without examination of the merits of the underlying dispute. *See Hirchensohn v. West*, No. 92-127, slip

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1. (...continued)
motion on December 10, 1993.

2. *See* Revised Organic Act of 1954 § 3 (codified at 48 U.S.C. § 1561 (1988)); *Kettle Creek Assocs. v. Bonanno*, 26 V.I. 56 (Terr. Ct. 1991).

op. at 6 (D.V.I. App. Div. Nov. 29, 1993); *Babcock v. Gold*, 25 V.I. 325, 328-29 (D.V.I. 1990). In this case, plaintiff alleges that the Florida judgment is entitled to full faith and credit because this Court has diversity jurisdiction over this action and the Florida court had personal jurisdiction over the Adams defendants. Although defendants do not challenge this Court's jurisdiction,[3] they do contend that the Florida court did not have personal jurisdiction over them and hence the resulting default judgment is invalid. Since the propriety of the Florida court's jurisdiction is properly before this Court, and because a determination that the Florida court had personal jurisdiction over the Adams defendants would permit the issuance of judgment in favor of Smith Korach, this Court must examine the parties' allegations concerning personal jurisdiction in detail.

Although each of the parties has submitted affidavits in this case, there is almost virtual agreement regarding the facts in this case.[4] Plaintiff, a Florida-based firm, apparently

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3. Defendants raised this Court's lack of jurisdiction as an affirmative defense in their answer to the complaint. However, they do not now challenge this Court's jurisdiction to determine whether summary judgment is appropriate in this case.

4. The only point of disagreement evidenced by the affidavits concerns the circumstances surrounding the initiation of the relationship between the parties in this case. Plaintiff's affidavit states that it was contacted by the Adams defendants in Florida. Defendants, however, assert that the contractual relationship was initiated in the Virgin Islands by plaintiff.

(continued...)

agreed to perform engineering services in connection with various construction projects in the Virgin Islands. One of plaintiff's partners, Leonard Hayet, has stated in his affidavit that the services were performed in Florida, an undetermined number of meetings were held in Florida, and two of the contracts were signed in Florida. Defendants do not contest any of these statements; however, Alton Adams, Jr. notes that some of the Florida meetings coincided with visits he made to Florida for personal reasons and the parties signed ten of their contracts in the Virgin Islands. The Hayet affidavit also indicates that the Adams defendants sent correspondence to plaintiff in Florida and mailed payments to plaintiff or plaintiff's bank in Florida. Defendant counters that at least fifty percent of the payments it made were hand-delivered to plaintiff's representatives while they were in the Virgin Islands performing services incident to the contract.

As noted above, the propriety of summary judgment rests on whether the Florida court correctly asserted *in personam* jurisdiction over the Adams defendants. This in turn, requires

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4. (...continued)
At oral argument, counsel for plaintiff stated that although his client may have initiated the relationship between the parties several years ago, the Adams defendants sought out Smith, Korach to perform the contracts at issue in this case. Defendants' counsel seemed to concede this point, but emphasized that the present contract was inextricably linked to the parties' previous course of dealing.

an analysis of the Florida long-arm statute and the due process clause of the Fourteenth Amendment.[5]

B. The Florida Long-Arm Statute

Florida courts may acquire jurisdiction over nonresident defendants who "breach[] a contract in [Florida] by failing to perform acts required by the contract to be performed in this state." FLA. STAT. ANN. § 48.193(1)(g) (West 1992). Defendants concede that plaintiffs have adequately invoked the relevant provision of the Florida long-arm statute by alleging that they failed to make certain payments to Smith, Korach in Florida for services rendered pursuant to the contractual agreements between the parties.

C. The Requirements of the Due Process Clause

As the Supreme Court has instructed in a case involving the same provision of Florida law at issue in this case, "the constitutional touchstone remains whether the defendant purposefully established 'minimum contacts' with the forum State." *Burger King Corporation v. Rudzewicz*, 471 U.S. 462, 474

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5. Because a plaintiff is not required to institute a lawsuit in the jurisdiction where defendant has had the best or most contacts, this Court is not required to scrutinize the nature or extent of either party's contacts with the Virgin Islands. *See Carson v. Skandia Ins. Co. Ltd.*, 19 V.I. 138, 148 (D.V.I. 1982).

(1985) (quoting *International Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945)). In other words, this Court must decide whether the acts of the Adams defendants require the conclusion that they "manifestly . . . availed" themselves of the privilege of conducting business in Florida so that it is "presumptively not unreasonable to require [them] to submit to the burdens of litigation in that forum as well." *Id*. at 476.

In determining whether the Adams defendants purposefully availed themselves of the privilege of the benefits and protections of Florida law, the Court is not required to consider the activities of the parties in isolation.[6] Of course, is beyond dispute that some of the activities of the Adams defendants would be insufficient to render defendants amenable to personal jurisdiction in Florida. For example, courts in Florida have long acknowledged that "the mere failure to pay money in Florida, standing alone, [is insufficient] to obtain jurisdiction over a nonresident defendant." *Venetian Salami Co. v. Parthenais*, 554 So.2d 499, 503 (Fla. 1989); *see also National Equipment Leasing, Inc. v. Watkins*, 471 So.2d 1369, 1370-71 (Fla.

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6. *See, e.g., American Vision Center, Inc. v. National Yellow Pages Directory Serv., Inc.*, 500 So.2d 642, 644 (Fla. App. 1986) (stating that "the parties' prior negotiations and contemplated future consequences, the terms of the contract, and the parties' actual course of dealing must be evaluated in determining whether a defendant purposefully establishes minimum contacts within a forum sufficient to establish jurisdiction over the defendant").

App. 1985). Similarly, the fact that the Adams defendants may have directed correspondence to Smith Korach in Florida cannot, without more, render defendants subject to personal jurisdiction in that state. *See Gehling v. St. George's School of Medicine, Ltd.*, 773 F.2d 539, 544 (3d Cir. 1985) (mailing a letter to the forum state did not "constitute[] a substantial enough connection with the forum state to make reasonable an assertion of personal jurisdiction").

Other aspects of the relationship between plaintiff and defendants do suggest, however, that the Adams defendants purposefully availed themselves of the benefits of Florida's laws. In particular, the parties held meetings and signed contracts in Florida and these contracts at least implicitly contemplated the performance of services in Florida.[7] Defendants attempt to trivialize the significance of the work performed in Florida by noting that Smith, Korach was required by law to obtain, and did obtain, a license in the Virgin Islands and that, as a result, it *could have* performed all of the necessary services in the Territory as well. Plaintiff's contacts with the

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7. Based upon the affidavits submitted by the parties, the Court does not construe this case as one requiring a Florida resident to furnish services at an unspecified location. *See Osborn v. University Soc'y*, 378 So.2d 873, 874 (Fla. App. 1979).

Virgin Islands, however, do not nullify defendants' contacts with Florida.[8]

Indeed, this point has been recognized by at least one other Florida court which ruled that it could exercise long-arm jurisdiction over a non-resident defendant who contracted with a Florida company to perform services related to an out-of-state project. *See Links Design, Inc. v. Lahr*, 731 F. Supp. 1535 (M.D. Fla. 1990). In doing so, the court noted that the parties held at least one meeting in Florida, the parties contemplated that, with the exception of site visits, most of the work would be performed in Florida, and the contract asserted that Florida law would be applicable to any disputes between the parties and that venue would be in Florida. *See id*. at 1539. Although the contracts at issue in this case apparently did not contain choice of law or choice of venue provisions, *Links Design* demonstrates that the mere fact that the engineering services performed by plaintiff were for construction projects located in the Virgin Islands is not sufficient to defeat jurisdiction in Florida.

Moreover, the fact that some of the meetings between the parties took place in Florida also supports the conclusion that

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8. *See supra* note 4. Moreover, the fact that Smith, Korach was not precluded from performing the necessary services in the Virgin Islands does not eliminate this Court's obligation to scrutinize the parties "actual course of dealing." *Burger King*, 471 U.S. at 479.

Alton Adams, Jr. purposefully availed himself of the benefits of Florida law. The Third Circuit has previously recognized that "[e]ven a single contact, if knowing and purposeful, may satisfy due process requirements." *Van Buskirk v. Carey Canadian Mines, Ltd.*, 760 F.2d 481, 491 (3d Cir. 1985). In this case, although the affidavits do not specify the number of meetings, it appears that Adams met with members of the Smith, Korach firm in Florida on more than one occasion. Defendants have also attempted to minimize the significance of these meetings by stating that the meetings coincided with visits that Adams made to Florida for medical purposes. Although that may in fact be true, this contention should be regarded no differently than the contention of defendants who asserted that they came to Illinois, the forum where personal jurisdiction was subsequently asserted, "only at the specific request of the plaintiffs." *Mandalay Association Ltd. Partnership v. Hoffman*, 491 N.E.2d 39, 43 (Ill. App. 1986). The Court there reasoned that "[i]n the absence of any evidence that [defendants'] physical presence in Illinois was obtained by plaintiff's trickery or "lurking" designed solely to create a jurisdictional predicate, it is immaterial that some of his visits to Illinois may have been made at the behest of the plaintiffs." *Id*. Similarly, this Court believes that the fact that Adams may have scheduled his business visits to coincide with visits for personal reasons or vice versa is immaterial

where, as here, the record clearly indicates that the parties met in Florida in furtherance of their business venture.

CONCLUSION

For the foregoing reasons, it is hereby

ORDERED that Plaintiff's motion for summary judgment is hereby GRANTED; and it is further

ORDERED that judgment is hereby entered against the Adams defendants and in favor of Plaintiff in the amount of the Florida Judgment[9] plus interest at the rate of 12% per annum from the date of the Florida judgment, May 26, 1992, until the date of this Judgment, and thereafter at the rate of 9% per annum.

DATED this 5th day of January, 1994.

ENTER:

_____/s/_____
THOMAS K. MOORE
CHIEF JUDGE

ATTEST:

ORINN F. ARNOLD, Clerk of the Court

By: _____

9. The Florida court awarded plaintiff $265,320.96. Of that amount, $301.29 represented costs and $10,368.50 represented attorney's fees.

Deputy Clerk

cc: Beverly A. Poole, Esq. (D'Amour, Jones, Stryker & Duensing)
Deverita C. Sturdivant, Esq. (Dudley, Clark & Chan)